

REMARKS

Reconsideration and allowance of the subject application are respectfully requested.

We first thank the Examiner for the courtesies he extended to Applicant's representative during the telephone interview conducted on December 7, 2004. An Interview Summary is attached.

In the September 22, 2004 Office Action, the rejections of the previous office action have been withdrawn in response to the last filed Amendment. However, the Examiner has introduced a new art rejection, citing two new references. Specifically, all pending claims 11 and 17-22 are rejected under 35 U.S.C. §103(a) as obvious over the combination of Moberg WO 96/11572 (previously cited), Goffinet (U.S. patent 4,414,128) and Merck Index monograph 1101 (definition of benzoic acid). Essentially, the Examiner's position is that Goffinet and the Merck Index teach germicidal and antifungal compositions that are useful to combat phytopathogenic microorganisms on hard surfaces (e.g., propionic acid, hydroxypropionic acid, propylene glycol, butylene glycol, sulfonates; and butylene glycol).

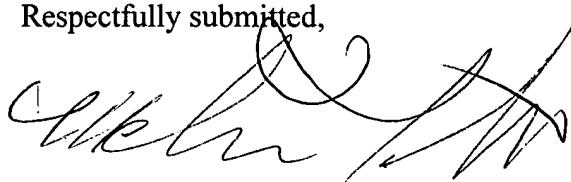
As discussed extensively with the Examiner during the telephone interview and subsequent briefer telephone calls, we submit here a Rule 132 Declaration with evidence of the criticality of the specific combination of components of independent claim 11, the broadest of our pending claims, to combat/inactivate phytopathogenic organisms that are present on plants and on hard surfaces surrounding the plants but do not damage the plants in the process. The Declaration provides data of comparative testing of exemplary formulations of the prior art – formulations in Moberg from examples 5d, 6e, 8 and 10b, and in example 6 from Goffinet – against the formulation of claim 11.

As shown in the Declaration, for all of the prior art formulations tested at both 1% and 2% concentrations, there was absolutely no appreciable effect demonstrated against the parasite *fusarium oxysporum*, whereas the composition of the invention at both 1% and 2% concentrations resulted in no growth of *fusarium oxysporum* four hours following treatment. Here is objective evidence that disinfectants like those of the prior

art are not able to combat phytopathogenic organisms, while the composition and method of our invention was quite successful. The tests were conducted by a third-party laboratory following acceptable official guidelines for evaluation of disinfectants used in conjunction with plant cultivation. The data and results are demonstrative that our compositions and methods would not and could not have been obvious over the formulations described in Moberg and/or Goffinet, alone or with the cited Merck Index. Since the formulations of the cited art are ineffective to deal with a plant parasite, no one would reasonably have thought to try to combine them to achieve the claimed composition with its specific combination of components. No one would be able to pick and choose from the respective teachings of each reference to come up with our specific combination of active agents, with any reasonable expectation of success. We submit that there is no suggestion whatsoever in these references of the combination of our ingredients, and the data submitted with this Rule 132 Declaration bears that out. Having provided the evidence that the Examiner has requested, we believe that withdrawal of this rejection is in order.

In summary, all of the Examiner's outstanding rejections and objections have been addressed, and the application is believed to be in allowable form. Notice to that effect is earnestly solicited. If the Examiner has any questions or would like to make suggestions as to claim language, he is encouraged to contact Marlana K. Titus at (301) 977-7227.

Respectfully submitted,



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